

EXHIBIT B

Page 1

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Page 2

1 PRESENT:

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3 DLA PIPER LLP
4 TAMAR DUVDEVANI
5 MARC MILLER
6 1251 Avenue of the Americas
7 New York, New York 10020
8 tamar.duvdevani@dlapiper.com
9 marc.miller@dlapiper.com
10 Appeared on behalf of Plaintiff.

11

12 DEBEVOISE & PLIMPTON LLP
13 MEGAN K. BANNIGAN
14 KATHRYN SABA
15 919 Third Avenue
16 New York, New York 10022
17 mkbannigan@debevoise.com
18 ksaba@debevoise.com
19 Appeared on behalf of Defendants.

20

21 ALSO PRESENT:

22 KIM VAN VOORHIS,

23 Nike, Inc.

24

25 VIDEOGRAPHER: Milo Savich
26 STENOGRAPHICALLY REPORTED BY:
27 JO ANN LOSOYA, CSR, RPR, CRR
28 LICENSE #: 084-002437

1 goods.

2 Q. Okay. So back to -- you mentioned that
3 Mr. Pallett told you about shoes that he had
4 attempted to authenticate and determined were
5 counterfeit; is that correct?

6 A. Yes, I believe it was -- it was him or
7 someone from his team.

8 Q. Okay. And do you know the circumstances
9 under which he or someone from his team
10 authenticated those shoes?

11 A. Yes. So, I reference that on Page 16.
12 So it's my understanding that they didn't have
13 physical or access to the physical shoes but they
14 were able to use their proprietary system in order
15 to determine that those shoes were indeed
16 counterfeit.

17 Q. Did you request that Mr. Pallett or his
18 team conduct this analysis?

19 A. No.

20 Q. Do you know when the analysis occurred?
21 And by "analysis," I mean, the authentication
22 process that Mr. Pallett or his team conducted.

23 A. No, I don't know exactly.

24 Q. To confirm, you don't know who conducted
25 the authentication, correct?

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1 confirm on May 31 and then he confirmed it on
2 June 1st? What exactly do you mean by that?

3 A. Yes. I believe so. I don't think he had
4 the answer on May 31 so he had to go back and...

5 Q. Did you go and ask him on May 31 to see
6 whether any of these shoes were counterfeit, he did
7 that, and then came back to you on June 1st?

8 A. I believe so, yes.

9 Q. Okay. Or is that -- do you know when he
10 conducted the analysis? Was that something before
11 you talked to him? Like what were the
12 circumstances? Because I think that's a little
13 contrary to what you just said and I just want to --
14 maybe I'm misunderstanding it.

15 I thought you had testified earlier
16 that you didn't know when he did the analysis or why
17 he did the analysis but when you were on the phone
18 with him, he told you about it.

19 MS. DUVDEVANI: Objection.

20 BY THE WITNESS:

21 A. So I don't know when -- exactly when he
22 conducted the analysis.

23 Q. Right.

24 A. And I don't know who on the Nike team
25 conducted the analysis.

1 Q. Have you ever worked for a resale
2 marketplace?

3 A. No.

4 Q. How do you define resale marketplace?
5 This is not a trick question. I just want to make
6 sure that we're not speaking past each other.

7 A. So I would define it as a marketplace
8 where goods are sold after they've already been
9 purchased once.

10 Q. Have you ever worked for a firm that
11 investigates counterfeit activity?

12 A. No.

13 Q. Have you ever personally conducted
14 investigations into counterfeit activity on behalf
15 of a brand?

16 A. No.

17 Q. Have you ever personally conducted
18 investigations into counterfeit activity on behalf
19 of a resale marketplace?

20 A. No.

21 Q. Have you ever designed a company's brand
22 protection program?

23 A. I have not designed, but I've consulted
24 on it in my role at the Center.

25 Q. Have you ever designed a company's

1 they might exclude some counterfeits. It's
2 certainly possible.

3 Q. Your opinion is not that they're not
4 trying to exclude counterfeits but that they can't
5 guarantee products are 100 percent authentic?

6 MS. DUVDEVANI: Objection.

7 BY THE WITNESS:

8 A. I'm not giving an opinion on whether
9 they're trying or not, but their claim that they can
10 authenticate can't -- I mean, it's not possible
11 because they cannot authenticate any products, but
12 they may be able to exclude some obvious counterfeit
13 in the same way that, you know, other platforms
14 exclude counterfeit. Some that view items, some
15 that don't view items.

16 I mean, the whole point of this -- of
17 the laws that are being passed and everything going
18 on right now with best practices is to try to keep
19 platforms as safe as possible, but when a platform
20 is claiming that they can authenticate in the way
21 that only the brand can and to 100 percent accuracy
22 or 99 point, forget what it was, almost 100 percent
23 accuracy, that's not possible.

24 Q. What if -- you also take issue with
25 StockX's -- well, withdraw that.

1 BY THE WITNESS:

2 A. So my entire life's work is around right
3 now anti-counterfeiting. So if there's any -- if
4 there's any opportunity for someone to remove a
5 potential counterfeit good from the stream of
6 commerce, whether that's someone enforcing on Canal
7 Street, or a brand owner submitting for a notice and
8 take down or a law enforcement agent following up,
9 yes, the goal of all of brand protection and
10 anti-counterfeiting is to remove counterfeit --
11 counterfeit listings or counterfeit products,
12 depending on whether it's brick and mortar or any
13 e-commerce.

14 Q. If a platform's anti-counterfeiting
15 measures still inadvertently allow some counterfeits
16 through, does that necessarily mean that the
17 platform is not trying to prevent the sale of
18 counterfeits?

19 MS. DUVDEVANI: Objection.

20 BY THE WITNESS:

21 A. Again, I can't speak to whether a
22 platform is trying or not.

23 Q. You can't speak to whether the platform
24 is not trying or not?

25 A. Correct.

1 Q. Would you agree that no
2 anti-counterfeiting program is perfect?

3 A. Specifically what do you mean by perfect?

4 Q. Would you agree that no
5 anti-counterfeiting program is able to eliminate the
6 threat of counterfeits?

7 A. Correct. So no -- I would agree with
8 that that no anti-counterfeiting program is able
9 to -- and if you are talking in the context of
10 platforms, is able to entirely -- entirely eliminate
11 counterfeiting, which is why e-commerce platforms
12 that allow third party sellers are so risky because
13 of that and also why it was surprising for me that
14 StockX had claimed to essentially make sure almost
15 100 percent of their products were authentic and
16 they essentially eliminated counterfeiting in their
17 marketplace.

18 Q. Do you know of any platforms that aren't
19 inundated with counterfeits?

20 MS. DUVDEVANI: Objection.

21 BY THE WITNESS:

22 A. Again, I haven't spoken to other
23 platforms specifically on levels of inundation by
24 similar sellers. We know that counterfeiting is
25 increasing exponentially, particularly since the

1 pandemic. So I imagine everybody's amount of sales
2 has increased, if for no other reason -- amount of
3 sales of counterfeit goods has increased if for no
4 other reason than the shear volume of online
5 shopping is increasing, which counterfeiting by it's
6 very nature tends to follow -- tends to follow that
7 stream as well. So it has -- I mean, it's generally
8 increased across the board globally.

9 Q. I asked you a minute ago whether you
10 would agree that no anti-counterfeiting program is
11 able to eliminate the threat of counterfeits and you
12 said "I would agree that no anti-counterfeiting
13 program is able to, if you are talking about in the
14 context of platforms."

15 Is there another context in which
16 counterfeiting has been totally eliminated?

17 A. So you asked me about anti-counterfeiting
18 programs. So I was responding about any commerce
19 platform's anti-counterfeiting program.

20 There are social media platform
21 anti-counterfeiting programs, there's brands
22 anti-counterfeiting programs, even some law firms
23 run anti-counterfeiting programs for brands or
24 technology vendors. I mean, there's a lot of
25 different types of anti-counterfeiting programs. So

1 or overt, whether that's a technology or something
2 else, this is something intentionally put into the
3 product where the packaging that's obvious that
4 someone can look at to say, okay, this is part of
5 our authentication process, but regardless, any
6 of -- any of the items or technologies that are put
7 into an authentication program have to be -- have to
8 be put together by the brand intentionally and,
9 oftentimes, depending on the products.

10 So depending on the product,
11 depending on the industry, there may be different
12 technologies used for different product lines, for
13 example, or even, again, if it's a smaller company
14 or a start-up, they may not have money to invest in
15 technology at that point, so maybe they will rely
16 initially, at least, only on one or two of these.
17 So these vary. But again, it's something that the
18 IP rights holder has to decide which ones they are
19 going to use in their authentication process and
20 who -- who within the brand has access and who, if
21 anyone, outside of the brand would have access to
22 those tools in order to authenticate a product.

23 Q. So if you look at the next page, you have
24 this blue hexagon with the different triangles,
25 that's page 22.

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1 A. Yep.

2 Q. And is this a diagram of the six
3 technologies or methods that you just mentioned?

4 A. Yes.

5 Q. Okay. So can you just explain to me --
6 just tell me which fits into these categories?

7 A. Sorry. Which fits into what categories?

8 Q. Let's go through the hexagon. I just
9 want to make sure I understand what you're talking
10 about in each of these triangles.

11 A. Okay.

12 Q. So let's start with covert technology.
13 Is this what you mentioned when you said they -- the
14 brand can put something obvious in the two that you
15 can see that will tell you if it's counterfeit or
16 not?

17 A. Under covert?

18 Q. Yes, covert technology.

19 A. No. Covert is something that can't be
20 seen by the naked eye.

21 Q. That was my fault. I get it. It's been
22 a long day. Okay. So let me clean this up.

23 What are you referring as covert
24 technology?

25 A. So covert technology, and I reference

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1 this, I believe, I think this is footnote 73 too, so
2 this is something that is not recognizable or
3 perceptible using human senses so it usually
4 requires a specialized tool or highly specialized
5 knowledge.

6 Q. Okay. [REDACTED]

7 A. [REDACTED]

8 Q. And then to the right of that, it says
9 overt tool available to the public. What do you
10 mean by that?

11 A. So an overt tool is something that some
12 brands have used, something that is, for example,
13 obvious in their mark or obvious in a product. I'm
14 thinking -- I can't remember exactly which brand
15 this is but they have a mark that if you turn it
16 sideways, you can see a different letter and they
17 share with their consumers this is something that
18 you can look at. That also means counterfeiters can
19 see it too, but it is used, usually in conjunction
20 with another -- with another -- with another set of
21 tools, but oftentimes that is one of the things that
22 someone could decide to use, or if they choose, to
23 give that to the public something that they might
24 use that anyone could look at and tell.

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1 Q. [REDACTED]

2 [REDACTED]

3 A. [REDACTED]

4 Q. Next for continuing, there's a triangle
5 that says covert?

6 A. That's an error and a typo. I have that
7 on there twice actually.

8 Q. Okay. So what's supposed to be there?

9 A. So I believe -- so it should match the
10 five that I refer to on the other page there.

11 Q. Well, there's six here.

12 A. Covert, overt, semi-covert, forensic, and
13 digital and then -- so the six that are supposed to
14 be in the image are the six that I talk about on
15 page 20. The point of the graphic was to say that
16 if a brand is using all six of those, no one can
17 authenticate it unless they use all six of those
18 technologies. So if a brand picks four types of
19 technologies to use in their authentication,
20 different people may have different access to those
21 tools, depending on who they determine, but the
22 final point of authentication can't be made unless
23 all four of those are checked by whoever would have
24 access to all four of those tools because I mean,
25 some -- some -- depending on what -- what the

1 product is may use multiple tools. So this was
2 meant simply as a -- as a diagram to explain those
3 five plus the human experience.

4 Q. Okay. I'm just going to look at page 20
5 if that's the correct list. We talked about overt.
6 We talked about covert, which those are numbers 1
7 and 3. The second is semi-covert. What do you mean
8 by that?

9 A. Sure. So that's a term actually that we
10 refer to in -- in the work of our Center, which
11 is -- which is something that is usually in between
12 overt and covert, which is something that often
13 might involve something that isn't very obvious when
14 you look at it but maybe there's, for example, a
15 rudimentary tool that might be needed to
16 authenticate whatever that is.

17 Q. Can you give me an example?

18 A. So, yeah, perhaps -- perhaps a brand, I
19 don't know, it tells someone -- this is totally
20 hypothetical but this is the idea, that, you know,
21 if you have our product and you put it in hot water,
22 you know, it may dissolve or something to that
23 effect. So it's something that isn't necessarily
24 obvious at the first moment, but if someone was to
25 do something with it, not necessarily with the

1 about that.

2 Q. Are you aware of any instance where
3 StockX did not offer to refund a customer after
4 being told by Nike that the customer received a
5 counterfeit product?

6 A. I don't have information either way about
7 that.

8 Q. Are you aware of any instance where
9 StockX did not ban a seller after being told by Nike
10 that the seller was a counterfeiter?

11 A. Again, I don't have any information about
12 that.

13 Q. It's your opinion that StockX cannot
14 determine whether a particular Nike product is
15 counterfeit without information or technology from
16 Nike, correct?

17 MS. DUVDEVANI: Objection.

18 BY THE WITNESS:

19 A. So it's my opinion that StockX cannot
20 authenticate Nike products or any other products
21 that they -- that they sell on their platform
22 particularly because they claim that they can
23 authenticate those products. So I don't believe
24 that they can authenticate any of them.

25 Q. And is it your opinion that StockX could

1 never authenticate regardless of whether it was
2 given information or technology from Nike?

3 MS. DUVDEVANI: Objection, asked and
4 answered.

5 BY THE WITNESS:

6 A. Yes. That's correct because they are not
7 the IP rights holder.

8 Q. Is it your understanding that Nike can
9 always determine with 100 percent certainty that a
10 particular Nike product is genuine?

11 MS. DUVDEVANI: Objection, asked and
12 answered.

13 BY THE WITNESS:

14 A. So it's my understanding that when they
15 used their authentication process, that yes, they
16 can determine whether a product is genuine or
17 authentic using [REDACTED].

18 Q. Your understanding is that is 100 percent
19 accurate, correct?

20 A. Yes. I have not seen any --

21 MS. DUVDEVANI: Objection, asked and
22 answered.

23 Go ahead.

24 BY THE WITNESS:

25 A. I have not seen any evidence to the